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Personal information

STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
Personal information

DECISION ON REHEARING
Case #: MOP - 202840

PRELIMINARY RECITALS

Pursuant to a petition filed on August 9, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Grant County Department of Social Services regarding Medical Assistance (MA), a hearing was held on December 22, 2021, by telephone.

The issue for determination is whether the agency correctly determined and seeks to recover an overpayment of medical assistance benefits in the amount of \$1,911.47 for the period from June 1, 2018 to Nov. 30, 2018 (Personal information).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
Personal information

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Personal information

Grant County Department of Social Services
8820 Hwys 35 and 61 South
PO Box 447
Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # Personal information) is a resident of Grant County.

2. On April 12, 2017, the agency issued to petitioner an About Your Benefits notice, informing her that her health care renewal was completed and that effective May 1, 2017, she was enrolled in Badger Care Plus (BCP) with no monthly premium. It informed her if her household monthly income exceeded \$1,005, she must report it to the agency by the tenth day of the following month.
3. On March 28, 2018, the agency issued to petitioner an Important Information about your Benefits notice, providing a summary of information she provided on March 22, 2018, including wage information that she earned \$13.56 per hour and worked 12.8 hours per biweekly pay period from **Personal information**.
4. On March 23, 2018, the agency issued to petitioner a Notice of Proof Needed regarding earned income from **Personal information**, with a deadline of April 2, 2018.
5. On April 24, 2018, the agency issued to petitioner an About Your Benefits notice informing her that her health care renewal was completed, effective May 1, 2018. It informed her that if her household income exceeded \$1,011.67 per month, she must report it to the agency by the tenth day of the following month.
6. On November 9, 2018, the agency issued to petitioner a notice of proof needed.
7. On November 20, 2018, the agency issued to petitioner an About Your Benefits notice, informing her that her health care benefits would end on January 1, 2019 because she did not provide requested proof of employment and income from **Personal information**. It informed her that to keep getting benefits without a new application, she must provide proof requested within one month of her benefits ending.
8. On December 11, 2018, the agency received wage verification regarding petitioner's earned income from **Personal information**.
9. Petitioner's total household income exceeded the BCP program limit beginning in April 2018. The income should have been reported to the agency in May 2018 and affected benefits beginning in June 2018 and continuing through November 2018.
10. On June 30, 2021, the agency issued to petitioner an BCP overpayment notice, informing her that she was not eligible for the BCP she received from June 1, 2018 to Nov. 30, 2018, in the amount of \$1,911.47 (**Personal information**).
11. On July 2, 2021, the agency issued a repayment agreement for current balance of \$1,911.47, due in full by July 25, 2021.
12. On August 11, 2021, the agency received the petitioner's request for fair hearing by U.S. Mail, postmarked August 8, 2021.
13. A hearing was scheduled for August 26, 2021 and rescheduled three times petitioner's request.
14. On October 6, 2021, written hearing notice was sent to petitioner of a hearing on October 21, 2021 at 1 p.m. Petitioner failed to appear.
15. On October 22, 2021, the Division issued a decision dismissing petitioner's appeal for her failure to appear at hearing on October 21, 2021.
16. On November 19, 2021, the Division received petitioner's request for rehearing, asserting that she did not receive notice of the October 21, 2021 hearing.
17. On December 3, 2021, the Division granted the rehearing request.

DISCUSSION

Medical assistance overpayment recovery is authorized by Wis. Stat., §49.497(1): The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following: 1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665. 2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits. 3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements. See also the agency's Badger Care Plus Handbook, §28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable. BadgerCare Plus Handbook, §28.3.

An overpayment is determined as follows: "Use the actual income that was reported or required to be reported in determining if an overpayment has occurred. The amount of recovery may not exceed the amount of the BadgerCare Plus benefits incorrectly provided. If the case was ineligible for BadgerCare Plus, recover the amount of fee-for-service claims paid by the state and any HMO capitation payments the state paid. Use ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s)." Handbook §28.4.2. As of April 1, 2014, all childless adults became eligible for BadgerCare Plus with an income limit equal to 100% of the Federal Poverty Level. See Wis. Stat., §49.45(23) for the law, and the Handbook, §50.1 for the limits.

For the relevant period of time, BadgerCare Plus recipients were required to report if income in a month rose above those levels. Handbook, §27.3. The report must be made by the tenth of the next month. BadgerCare Plus will close the following month if income remains above the limit. Because petitioner did not report her increased income, she continued to be enrolled in BCP and capitation rates and payments were made by medical assistance that petitioner was not eligible to receive. The agency is required to seek recovery of the amount of BCP benefits incorrectly provided and to recover the amount of fee-for-service claims paid by the state and any HMO capitation payments the state paid.

The agency established by a preponderance of the evidence that petitioner received BCP benefits for from June 2018 to November 2018 that she was not eligible to receive. The agency documented the methods by which it calculated the overpayment. Petitioner did not dispute that it correctly determined the amount of benefit received. Petitioner is liable for the overpayment. The agency correctly seeks to recover these benefits.

Petitioner does not dispute that she earned the income used, or that she failed to report it or that she was overpaid BCP. She testified that she thought she applied for insurance through the federally facilitated marketplace (FFM) and did not know she had BCP and that she didn't know there was an income limit. She was provided written notice of benefit eligibility and income reporting requirements. Her failure to heed that information is her error. She said the person at the agency at the time of her application should have called her by phone rather than in writing because she understands things better that way and that starting in January of the next year a lot of things happened. Finally, she said that it is a financial hardship to repay the money.

I have authority to determine whether the agency acted correctly. I do not have the authority to alter or disregard program rules or law based on petitioner's learning style, personal circumstances or financial hardship. I am without authority to base any decision on grounds of equity. It is the longstanding policy of the DHA that its administrative law judges do not possess equitable powers. See, *Wisconsin Socialist*

Workers 1976 Campaign Committee v. McCann, 433 F.Supp 540, 545 (E.D. Wis.1977). See also, *Village of Silver Lake, Wis. v. DOR*, 87 Wis. 2d 463 (Wis. App. 1978). DHA must limit its decisions to the law as set forth in state and federal statutes and administrative code provisions. As such, I must uphold the agency's overpayment determination in this case.

CONCLUSIONS OF LAW

The agency correctly seeks to recover an overpayment of BadgerCare Plus benefits in the amount of \$1,911.47 (**Personal information**) for the period from June 2018 to November 2018 as a result of petitioner's error in failing to report earned income exceeding the program's income limit.

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

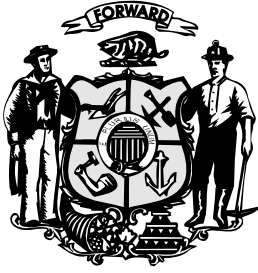
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of January, 2022



\s _____

Beth Whitaker
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 11, 2022.

Grant County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability